IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.234 of 1998
In
Contempt Petition No.6 of 1997
In
Suit No.981 of 1982

Abdulla Abdul Kadar. .. Appellant
(Org.Respndt.No.1)

Vs.

Faredoon Rustom Parvaresh & Ors. .. Respondents

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CORAM : R.M.S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ

DATED : 8TH JANUARY, 2007

ORAL JUDGMENT: (Per R.M.S.KHANDEPARKAR, J)

1. This appeal arises from the order dated 7th October, 1997. By the impugned order, the learned Single Judge has held that the appellant herein to be guilty of civil contempt for wilful disobedience of the direction issued by this Court under order dated 20th December, 1995. Disobedience is stated to be on account of non-compliance of the direction in relation to the restoration of the name of the restaurant.

2. While assailing the impugned order, the learned advocate for the appellant submitted that in the explanation submitted by the appellant pursuant to

the Notice of Contempt issued, while tendering apology, it was brought to the notice of the Court that the appellant had taken care to restore the name of the restaurant inasmuch as the original name "Edward Restaurant" was never removed. However, in order to facilitate the business in the restaurant, additional information was displayed on the board so as to attract the customers of various communities. It is the case of the appellant that in case the name "Edward Restaurant" was continued without any further information on the board of the restaurant, the impression would have been created that the restaurant was meant for serving non-vegetarian food when in fact the restaurant was serving vegetarian food. It is further contention of the appellant that without taking into consideration the said explanation as well as unqualified apology tendered by the appellant, the learned Single Judge held the appellant to be guilty of civil contempt of Court on the alleged ground of willful disobedience of the said direction issued under the order dated 20th December, 1995.

3. Perusal of the impugned order discloses that the learned Single Judge has held the appellant to be guilty of contempt of court on the ground that there was no denial of the fact that the directions issued

by the Court in relation to restoration of the name of the restaurant were not immediately complied with, and further admission that the business was carried out in the name of "Fort Plaza" and thereafter in the name of "Arpan Restaurant" which clearly discloses that there was deliberate disobedience of the order issued by the Court particularly in relation to clause (e) of the Order dated 20th December, 1995.

4. The clause (e) of the order dated 20th December, 1995 was to the effect that the appellant was directed to forthwith restore status quo ante of the name of the restaurant and the name of the partnership firm in which the suit partnership business was carried on. Sometime in December, 1996, the original plaintiff filed the petition for proceeding against the appellant for contempt of Court alleging non compliance of the said direction. Notice in that regard came to be issued to the appellant on 2nd August, 1997. Simultaneously, the matter was also brought to the notice of the Court Receiver and in the course of meetings held before the Court Receiver, it was revealed that attention was drawn to the fact that the appellant had not complied with the direction under clause (e) in the manner it was required to be complied with and consequent to that the respondents

had taken remedial measures so as to comply with the direction in letter and spirit. This is revealed from the records relating to the minutes before the Court Receiver and the report drawn in that regard on 18th and 27th August, 1997 and 8th September, 1997.

5. It cannot be disputed that violation of the Court's order cannot be allowed to go unpunished. However, at the same time, it is well settled that mere non compliance of any order by itself cannot amount to contempt of court unless there is wilful disobedience in that regard. While considering the issue relating to the non compliance of the order in contempt proceedings, it is always necessary to take into consideration the explanation, if any, given by a person against whom contempt proceedings are initiated for non compliance of the order. In the case in hand, the records apparently disclose that the appellant had tendered explanation for delay in complying with the direction as well as necessity for the information which was displayed on the name board regarding restaurant. Taking into consideration the realities of life, it cannot be disputed that the name "Edward Restaurant" could create impression in the mind of the visitors to the restaurant that the same is meant for catering services in relation to non-vegetarian food.

Once it is not in dispute that the restaurant in question was serving vegetarian food and in order to give a clear idea in that regard to the customers, the appellant had displayed certain further information on the name board of the restaurant or in the bills issued to the customers, that by itself can hardly be said to amount to violation of the Court direction under order dated 20th December, 1995 as the direction was merely to restore the name of the restaurant. There was no direction or relief of injunction restraining the appellant from taking appropriate steps to facilitate the business in the restaurant or to provide further information to the visitors of the restaurant regarding the nature of food that would be made available in the restaurant. Considering the said aspect and taking into consideration the explanation tendered by the appellant, in our considered opinion, it cannot be said that there was willful disobedience of the direction issued by the Court under clause (e) of the order dated 20th December, 1995.

6. In our considered opinion, it cannot be termed as "willful disobedience of the said order", and therefore, there is no case for holding the appellant guilty of contempt of court in relation to clause (e)

of the order dated 20th December, 1995.

7. For the reasons stated above, therefore, the impugned order holding the appellant to be guilty of contempt of court in relation to the direction under Clause (e) by the Court in its order dated 20th December, 1995 is hereby set aside. The appeal is accordingly allowed and stands disposed of. Notice stands discharged.

(R.M.S.KHANDEPARKAR, J)

(DR.D.Y.CHANDRACHUD, J)